

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JPMORGAN CHASE BANK, N.A.,

Plaintiff,

v.

HOSTWAY CORPORATION,

Defendants.

Case No. 09-CV-000335 (PKL)  
ECF Case

**ANSWER**

Defendant Hostway Corporation (“Hostway”), by and through its attorneys Morison Ansa Holden Assuncao & Prough, LLP, for its answer to Plaintiff’s complaint (the “Complaint”), states as follows:

**NATURE OF THE ACTION**

1. Hostway denies the allegations contained in paragraph 1 of the Complaint.
2. Hostway admits the allegations contained in paragraph 2 of the Complaint.
3. Hostway states that paragraph 3 of the Complaint states a legal conclusion for which no answer is required.
4. Hostway denies the allegations contained in paragraph 4 of the Complaint.
5. Hostway denies the allegations contained in paragraph 5 of the Complaint.
6. Hostway denies the allegations contained in paragraph 6 of the Complaint.

**JURISDICTION AND VENUE**

7. Hostway denies the allegations contained in paragraph 7 of the Complaint.
8. Hostway admits the allegations contained in paragraph 8 of the Complaint but denies that venue is proper.

## **PARTIES**

9. Upon information and belief, Hostway admits the allegations contained in paragraph 9 of the Complaint to the extent that JPMorgan is a national banking association organized and existing under the laws of the United States of America, but denies that JPMorgan is a resident of New York County.

10. Hostway admits the allegations contained in paragraph 10 of the Complaint.

## **FACTUAL ALLEGATIONS**

### **A. The Relevant Agreements**

11. Hostway admits the allegations contained in paragraph 11 of the Complaint.

12. Hostway admits the allegations contained in paragraph 12 of the Complaint.

13. Hostway states that paragraph 13 of the Complaint contains a legal conclusion to which no answer is required.

14. Hostway states that paragraph 14 of the Complaint contains a legal conclusion to which no answer is required.

15. Hostway states that paragraph 15 of the Complaint contains a legal conclusion to which no answer is required.

### **B. Default, Termination and Demand for Payment**

16. Hostway denies the allegations contained in paragraph 16 of the Complaint.

17. Hostway admits the allegations contained in paragraph 17 of the Complaint to the extent that JPMorgan sent Exhibit D to Hostway, but denies the remaining allegations contained in paragraph 17 of the Complaint.

18. Hostway admits the allegations contained in paragraph 18 of the Complaint to the extent that JPMorgan sent Exhibit D to Hostway, but denies the remaining allegations contained in paragraph 18 of the Complaint.

19. Hostway admits the allegations contained in paragraph 19 of the Complaint.

20. Hostway denies the allegations contained in paragraph 20 of the Complaint.

21. Hostway admits the allegations contained in paragraph 21 of the Complaint to the extent that it received Exhibit E by hand delivery, but denies the remaining allegations contained in paragraph 21 of the Complaint.

22. Hostway admits the allegations contained in paragraph 22 of the Complaint to the extent that it received Exhibit E, but denies the remaining allegations contained in paragraph 22 of the Complaint.

23. Hostway admits the allegations contained in paragraph 23 of the Complaint to the extent that it received Exhibit F, but denies the remaining allegations contained in paragraph 23 of the Complaint.

24. Hostway denies that it owes any amount to plaintiff as alleged in paragraph 24 of the Complaint and further denies the remaining allegations contained in paragraph 24 of the Complaint.

25. Hostway admits the allegation contained in paragraph 25 of the Complaint that it sent consolidated financial statements and a report of Ernst & Young LLP to plaintiff on August 28, 2008 but denies the remaining allegations contained in paragraph 25 of the Complaint.

26. Hostway admits the allegation contained in paragraph 26 of the Complaint that it sent plaintiff a “Third Amendment and Waiver to Credit and Guaranty Agreement” but denies the remaining allegations contained in paragraph 26 of the Complaint.

27. Hostway denies the allegations contained in paragraph 27 of the Complaint.

### **FIRST CAUSE OF ACTION**

28. Hostway repeats and realleges its responses to paragraphs 1 through 27 with the same force and effect as though fully set forth herein.

29. Hostway denies the allegations contained in paragraph 29 of the Complaint.

30. Hostway denies the allegations contained in paragraph 30 of the Complaint.

### **SECOND CAUSE OF ACTION**

31. Hostway repeats and realleges its responses to paragraphs 1 through 30 with the same force and effect as though fully set forth herein.

32. Hostway denies the allegations contained in paragraph 32 of the Complaint.

33. Hostway denies the allegations contained in paragraph 33 of the Complaint.

### **AFFIRMATIVE DEFENSES**

#### **FIRST SEPARATE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

#### **SECOND SEPARATE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by plaintiff's prior material breaches of the agreements.

#### **THIRD SEPARATE DEFENSE**

Plaintiff's claims are barred, precluded, or limited by the doctrine of waiver.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, precluded, or limited by the doctrine of estoppel.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, precluded, or limited by the doctrine of unclean hands.

### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims must be transferred pursuant to 28 U.S.C. § 1404(a).

WHEREFORE, Hostway denies that plaintiff is entitled to judgment or any damages, and requests that this Court find in favor of Hostway, and award the costs and expenses, including attorney's fees, incurred by Hostway herein, to be determined at trial.

Dated: White Plains, New York  
January 21, 2009

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